



Multistate Tax Commission Memorandum

States Working Together Since 1967 . . . To Preserve Federalism and Tax Fairness

To: Compact Member States Representatives of the Multistate Tax Commission
From: Dan R. Bucks, Executive Director
Date: April 9, 2003
Subject: Bylaw 7 Survey of Member States Regarding a Model Uniform Statute for Reporting Federal Tax Adjustments with Accompanying Model Regulation

This memorandum includes an official survey required by the Commission's Bylaws as an essential part of developing a uniformity recommendation. Your response to this survey is requested by May 9, 2003. We thank you in advance for your cooperation.

Enclosed please find a Bylaw 7 Survey Response Form for the Proposal on a Model Uniform Statute for Reporting Federal Tax Adjustments with Accompanying Model Regulation (Reporting Federal Tax Adjustments Proposal). This proposal was developed to bring uniformity to the reporting requirements for taxpayers whose returns have been adjusted by the Internal Revenue Service. A Public Hearing on the proposal was conducted in Washington DC on December 17, 2002.

If your State is an "affected State" within the meaning of Bylaw 7 (see list below), we request that you return a completed survey response form by mail, fax or e-mail on or before May 9, 2003. As indicated on the survey form, all responses should be directed to Loretta King by fax at 202-624-8819, e-mail at lking@mtc.gov or mail at the MTC office in DC.

At its meeting held January 16, 2003, the Executive Committee of the Commission authorized the conduct of a Bylaw 7 survey with respect to the proposal to adopt the Model Uniform Statute for Reporting Federal Tax Adjustments with accompanying Model Regulation. The proposal, if adopted by the Commission, would provide a uniform general rule for reporting changes in a taxpayer's federal taxable income, tax liability, or federal income tax return to States after a final determination has been issued. The proposal also includes provisions for determining the limitations period for taxpayers to notify the State of any such changes, and make claims for refunds if appropriate, as well as the limitations period for States to make assessments of additional taxes due. Pursuant to the requirements of Bylaw 7 of the Commission, the Executive Committee has referred the proposal to all Compact Member States of the Commission "to determine if the affected members will consider adoption of the recommendation within their respective jurisdictions." If a majority of the "affected members" indicate that they will consider adoption of the proposal, the Model Uniform Statute for Reporting Federal Tax Adjustments with accompanying Model Regulation will be presented for final action as a Commission uniformity recommendation to the states at the Commission's regularly scheduled meeting to be held August 1, 2003, in Salt Lake City, Utah. If your State is an "affected member," your vote on the attached survey is an important step to bringing the proposal to the vote of the Commission.

Please do not hesitate to contact me through 202-624-8699 or by e-mail at dbucks@mtc.gov if you have any questions about the proposal or the procedure that is being followed in this instance.

List of Affected and Unaffected Multistate Tax Compact Member States

| <u>Affected Member States</u> | <u>Unaffected Member States</u> |
|--|---------------------------------|
| Alabama Alaska Arkansas California (Franchise Tax Board) Colorado District of Columbia Hawaii Idaho Kansas Maine Michigan Minnesota Missouri Montana New Mexico North Dakota Oregon South Dakota Texas Utah Washington | |

Through the resolution authorizing this survey, the Executive Committee has determined that an affected State within the meaning of Bylaw 7 is any full Member State that has a corporate income tax, a franchise tax based on income or a similar tax. This list reflects our best understanding of which Member States are appropriately classified as an "affected State" within the meaning of Bylaw 7 and which are not. **If you believe we have erroneously classified your State in the *List of Member States*, please advise us of that fact and the basis upon which you have reached the contrary conclusion. If you are an "affected State," regardless of how your State is classified on the *List of Member States*, please be sure to return your survey in all events.**

MULTISTATE TAX COMMISSION—BYLAW 7 SURVEY RESPONSE FORM

**Proposed Adoption of a Model Uniform Statute for Reporting Federal Tax Adjustments
with Accompanying Model Regulation**

*Please return by **May 9, 2003**, by mail, fax or e-mail to:*

Ms. Loretta King

Multistate Tax Commission

444 N. Capitol Street, N.W., Suite 425, Washington, D.C. 20001

FAX: (202) 624-8819—Phone: (202) 624-8699—e-mail: lking@mtc.gov

From:

Name of Tax Agency Official

Jurisdiction:

The MTC Hearing Officer for the Public Hearing on the proposed Model Uniform Statute for Reporting Federal Tax Adjustments with accompanying Model Regulation has recommended the conduct of a Bylaw 7 survey to determine the Member States' interest in considering adoption of the proposal. The recommended Model Uniform Statute for Reporting Federal Tax Adjustments with accompanying Model Regulation is attached to this Survey Response Form as *Exhibit A*. Should you wish a copy of all or any of the Hearing Officer report(s), please contact Ms. Loretta King at the Commission's headquarters office at 202-624-8699.

The purpose of this survey is to determine how many affected Multistate Tax Compact Member States would consider adopting the Model Uniform Statute for Reporting Federal Tax Adjustments with accompanying Model Regulation, if the proposal were adopted as a uniformity recommendation by the Commission.

The question for your consideration and response is as follows:

If the Commission were to recommend to its affected Member States the adoption of the Model Uniform Statute for Reporting Federal Tax Adjustments with Accompanying Model Regulation (attached hereto as Exhibit A), would your agency consider adoption of the proposal?

[] YES

[] NO

If you have marked "NO" as your answer above, but a change in one or more of the provisions of the proposal would change your answer to "YES", please note such changes or other comments that you might have on the next page.

Comments and/or suggested changes (attach additional sheets if necessary):

EXHIBIT A
MULTISTATE TAX COMMISSION

**Proposed Model Uniform Statute for Reporting Federal Tax Adjustments
with Accompanying Model Regulation**

Statute:

SECTION A. Reporting Federal Adjustments; assessment of additional tax

- (1) As used in this section and Section B, unless the context requires otherwise, "final determination" shall refer to
 - (a) the allowance of a refund or credit under Section 6407 of the Internal Revenue Code of 1986; or
 - (b) the official act of assessment under Section 6203 of the Internal Revenue Code of 1986, except assessments that result from the following shall not be considered final determinations:
 1. tax under a partial agreement,
 2. tax in jeopardy, and
 3. advance payments; or
 - (c) a final denial of a refund claim where a state refund claim has been filed or any other final action by the Internal Revenue Service that increases or decreases the state tax liability of a taxpayer for any tax year.
- (2) Every Taxpayer or group of taxpayers whose federal taxable income, federal tax liability or federal tax return has been changed, adjusted, or corrected for any income tax year pursuant to a final determination under Section A.(1) shall, within one hundred eighty (180) days of the date of the final determination, file the report of federal changes or state amended return as prescribed herein reporting the changes, adjustments or corrections to taxpayer's federal taxable income, federal tax liability or federal tax return resulting from the final determination under Section A.(1) and pay additional state tax due. The taxpayer shall also submit available documentation sufficiently detailed to allow computation of the tax change.
- (3) (a) If the taxpayer files the report of federal changes or state amended return as prescribed in and within the time limit specified in Section A.(2), any additional state tax resulting from the final determination under Section A.(1) may be assessed and a notice of assessment issued to the taxpayer by the [State Agency] on or before the later of:

- {(i) The expiration of the limitations period specified in [citation to state statute setting forth normal limitations period]; *optional*} or
 - (ii) The last day of the one (1) year period following the due date of the report of federal changes or state amended return prescribed in Section A.(2).
- (b) If the taxpayer fails to file a report of federal changes or state amended return as prescribed in and within the time limit specified in Section A.(2), any additional state tax resulting from the final determination under Section A.(1) may be assessed and a notice of assessment issued to the taxpayer by the [State Agency] on or before the later of:
 - {(i) The expiration of the limitations period specified in [citation to state statute setting forth normal limitations period]; *optional*} or
 - (ii) The last day of the one (1) year period following the date the report of federal changes or state amended return is actually filed with the [State Agency]; or
 - (iii) The last day of the one (1) year period following the date the [State Agency] is notified by the Internal Revenue Service in writing or by electronic means that a final determination has been made, provided the taxpayer has not filed a report of federal changes or state amended return prior to the [State Agency's] receipt of the IRS notification.
- (4) The time periods provided for in this section may be extended by agreement between the taxpayer and the [State Agency]. Any extension granted for filing the report of federal changes or state amended return shall also be considered as extending the last day prescribed by law for any additional tax resulting from the final determination being assessed and a notice of assessment being issued to the taxpayer by the [State Agency].

SECTION B. Claim for refund or credit of tax

- (1) Any claim for refund or credit related directly to changes, adjustments or corrections to the taxpayer's federal taxable income, federal tax liability or federal tax return resulting from a final determination under Section A.(1) shall be filed on or before the expiration of the later of the limitations period specified in [citation to state statute setting forth normal limitations period for allowing refund or credit {*optional*}] or the last day of the one (1) year period from the due date of the report of federal changes or state amended return prescribed in Section A.(2).
- (2) An extension of time for filing the report of federal changes or state amended return extends the last day prescribed for filing the claim for refund to the extended date.

Regulation:

- A. Examples of assessments considered to be final determinations include, but are not limited to:
 - 1. A final judicial decision;
 - 2. A closing agreement under Section 7121 of the Internal Revenue Code of 1986;
 - 3. An uncontested assessment as defined by Regulation; or
 - 4. The execution of a waiver of restriction on assessment that is not a partial agreement. Examples of an assessment that results from the execution of a waiver of restriction on assessment include assessments that result from the signing of Forms 870, 870AD, or 4549.
- B. The term “uncontested assessment” shall mean:
 - 1. An assessment pursuant to an amended return filed by the taxpayer or
 - 2. an assessment that follows a taxpayer’s receipt of a statutory notice of deficiency wherein the taxpayer does not petition the Tax Court.